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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,766	11/21/2003	Victor Matthew Dmitruk	Dmitruk	3097
<div>7590 Victor M. Dmitruk 393 M-89 Plainwell, MI 49080</div>				
<div>06/18/2007</div>				
<div>EXAMINER CARLOS, ALVIN LEABRES</div>				
<div>ART UNIT 3709</div>				
<div>PAPER NUMBER</div>				
<div>MAIL DATE 06/18/2007</div>				
<div>DELIVERY MODE PAPER</div>				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/719,766

Applicant(s)

DMITRUK, VICTOR MATTHEW

Examiner

Alvin L. Carlos

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Objections***

### ***Drawings***

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).
2. An examination of this application reveals that applicant is unfamiliar with patent prosecuting procedure. Applicant is reminded that the revision of the specification and claims to present the application in proper form is required. While an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

Applicant is advised to arrange the content of the specification as described below:

### **Content of Specification**

- (a) Title of the Invention. (See 37 C.F.R. § 1.72(a)). The title of the invention should be placed at the top of the first page of the specification. It should be brief but technically accurate and descriptive, preferably from two to seven words.
- (b) Cross-References to Related Applications: See 37 C.F.R. § 1.78 and section 201.11 of the M.P.E.P. This relates to any other applications that Applicant has pending before the Patent Office.

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- 8 Statement as to rights to inventions made under Federally sponsored research and development (if any): See section 310 of the M.P.E.P.
- (d) Background of the Invention: The specification should set forth the Background of the Invention in two parts:
- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field".
  - (2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art".
- (e) Summary: A brief summary or general statement of the invention as set forth in 37 C.F.R. § 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (f) Brief Description of the Drawing(s): A reference to and brief description of each of the drawing figure(s) as set forth in 37 C.F.R. § 1.74.
- (g) Description of the Preferred Embodiment(s): A description of the preferred embodiment(s) of the invention as required in 37 C.F.R. § 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. This item may also be titled "Best Mode for Carrying Out the Invention". Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

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(h) Claim(s) (See 37 C.F.R. § 1.75): A claim may be typed with the various elements subdivided in paragraph form. There may be plural indentations to further segregate subcombinations or related steps. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent cited.

(I) Abstract: The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said", should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," *etc.*

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains.

If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure.

If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement.

In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof.

If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following: (1) if a machine or apparatus, its organization and operation; (2) if an article, its method of making; (3) if a chemical compound, its identity and use; (4) if

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a mixture, its ingredients; (5) if a process, the steps. Extensive mechanical and design details of apparatus should not be given.

As per 37 CFR 1.52(b), the application papers must be plainly written (preferably typed) on but one side of the paper. The size of all sheets of paper should be 8 to 82 by 102 to 13 inches (20.3 to 21.6 cm by 26.6 to 33.0 cm). Margins of at least approximately 1 inch on the left hand side and 3/4 inch on the top must be reserved on each page. The lines on each page should be double spaced to permit the insertion of amendment. The pages of application, including the claims and abstract should be numbered consecutively, starting with 1, the numbers being centrally located preferably below the text.

If Applicant wishes to continue to prosecute this patent application, applicant must reply in writing. It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

1. Serial number (checked for accuracy).
2. Group art unit number (copied from filing receipt or most recent Office Action).
3. Filing date.
4. Name of the examiner who prepared the most recent Office action.
5. Title of invention.
6. Name of Applicants.

Applicant's reply should identify the Office Action the amendment is in response to by its mailing date or paper no. and must specifically request further examination and reconsideration. Applicant or Applicant's registered representative must sign the reply.

In a reply to an Office Action, Applicant can amend the specification, drawings and claims to overcome objections and rejections as well as argue against any position

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taken by the Examiner. Applicant's arguments and other pertinent comments should appear under the heading "REMARKS". In Applicant's remarks, applicant must point out each error, if any, applicant believes the Examiner has made in the current Office Action and/or how any amendments Applicant has made to the specification, drawings and claims overcome the Examiner's objections and rejections. Applicant must respond to each and every ground of rejection and objection raised in the current Office Action.

To overcome the objection and rejection for lack of an enabling disclosure, Applicant can argue that the holding of non-enabling by the Examiner is in error. To be persuasive, however, such an argument must point out where, in the specification as originally filed, the specification provides the necessary detailed disclosure for supporting the claimed invention. Alternatively, the Applicant could rebut the Examiner's holding of non-enabling by submitting evidence that the disclosure as it now stands is sufficient to enable an artisan, of ordinary skill, to make and use the invention. Such evidence should take the form of patents or literature published before the filing date of Applicant's application. Alternatively, the evidence could take the form of one or more affidavits by skilled in the art, stating facts, and on the basis of their knowledge and skill, establish that, on or before the filing date of Applicant's application, one of ordinary skill in the art could make and use the claimed invention from reading the specification without undue experimentation.

Applicant can amend the specification and drawings by sending the Office a signed letter directing the Office to make the specified alterations. Amendments are

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governed by 37 CFR 1.121. Amendments to the specification may be made by either adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification. To delete, replace or add a paragraph the following must be included:

- (i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs;
- (ii) The full text of any replacement paragraph with markings to show all the changes relative to the previous version of the paragraph. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strikethrough cannot be easily perceived;
- (iii) The full text of any added paragraphs without any underlining; and;
- (iv) The text of a paragraph to be deleted must not be presented with strike-through or placed within double brackets. The instruction to delete may identify a paragraph by its paragraph number or include a few words from the beginning, and end, of the paragraph, if needed for paragraph identification purposes.

To make an amendment by substitute specification the following must be provided:

- (i) An instruction to replace the specification; and



- (ii) A substitute specification in compliance with §§ 1.125(b) and (c).

Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered). All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)).

The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment. All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted

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matter must be shown by ~~strike-through~~ except that double brackets placed before and after the deleted characters may be used to show deletion of **five or fewer consecutive characters**. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.” The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, i.e., without any underlining.

See 37 CFR 1.121. Sample amendments and common question and answers are posted at:

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/moreinfoamdtprac.htm>

### ***Claim Rejections***

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. The claimed invention lacks patentable utility because the claimed invention as a whole must produce a useful, concrete and tangible result. The invention as claimed is totally incapable of achieving a concrete result. For instance, when the method is applied to different individuals, the result would vary from one another.

5. Claim 1 provides for the use of eliminating smoking and other repetitive habits, but, since the claim does not set forth any steps involved in the method, it is unclear what method applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Moreover, claim 1 is indefinite and nonenabling because (a)-(g) have no relationship to each other and it fails to provide the steps of making and using the claimed invention.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claim 1 is rejected under 35 U.S.C. 102(a) and (e) as being anticipated by O'Donnell US Pub 2003/0027116 that teaches a method for assisting a person in changing a smoking behavior (page 1 paragraph 0002, 0011), withdrawal symptoms are minimized and smoking does not constitute failure (page 4 paragraph 0091 lines 6-9, lines 15-18), personal motives are identified, magnified and utilized to smokers (pages 2 and 3 paragraphs 0051 and 0053), isolates smoking to unlikely location (page 5 paragraphs 0102 and 0103), relaxational techniques and a freedom object to enhance motivation to quit (page 4 paragraph 0091 lines 18-21) as disclosed and as claimed.

### ***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. As per the attached Notice of References Cited.

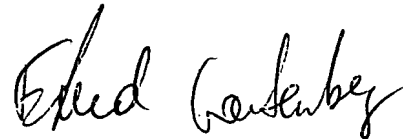
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin L. Carlos whose telephone number is 571-2703077. The examiner can normally be reached on 7:30am-5:00pm EST Mon-fri (alternate friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-2724828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC   
06/04/2007



**EHUD GARTENBERG**  
**SUPERVISORY PATENT EXAMINER**

6/4/07